

Chapter 650**DAMAGE CLAIMS - OIL CONVEYANCE FUND**

SUMMARY: These rules outline the complete procedures that are to be followed when a 3rd party damage claim is filed with the department. Provisions are made for when a claim must be filed; extension of time for filing; forms; waivers; processing; agreement between parties; mystery spills; arbitration; consolidation of a number of claims; conduct of hearings; and decisions.

- 1. Scope of Rules.** These rules are adopted by the Board of Environmental Protection of the State of Maine pursuant to the authority granted to it by the provisions of 38 MRSA, Sections 361, 546 and 551.

These rules are applicable to the processing of all claims for damages as the result of a discharge of oil, petroleum products or their by-products prohibited by 38 MRSA, Section 543 and for the payment of such claims from the Maine Coastal Protection Fund.

2. Definitions

- A. BOA.** "BOA" shall mean the Board of Arbitration.
- B. Board.** "Board" shall mean the Board of Environmental Protection.
- C. Chairman.** "Chairman" shall mean the Chairman of the Board of Arbitration.
- D. Claim.** "Claim" shall mean a claim filed with the Board of Environmental Protection for recovery from the Maine Coastal Protection Fund for damages to real estate or personal property or loss of income directly or indirectly as a result of a discharge of oil.
- E. Claimant.** "Claimant" shall mean the person or persons filing a claim with the Board of Environmental Protection for damages to be paid out of the Maine Coastal Protection Fund as the result of the discharge of oil.
- F. Coastal Conveyance Act.** "Coastal Conveyance Act" shall mean Maine's Oil Discharge Prevention and Pollution Control Law, 38 MRSA §§541-557.
- G. Commissioner.** "Commissioner" shall mean the commissioner of the Department of Environmental Protection.
- H. Discharge.** "Discharge" shall mean a discharge of oil prohibited by 38 MRSA §543.
- I. Department.** "Department" shall mean the Department of Environmental Protection.
- J. Fund.** "Fund" shall mean the Maine Coastal Protection Fund established by 38 MRSA §551.
- K. Licensee.** "Licensee" shall mean any person holding or required to hold a license to operate or cause to be operated an oil terminal facility, pursuant to 38 MRSA §545 and shall include the agents, servants or principal of such person.
- L. Oil.** "Oil" shall mean oil as that term is defined by 38 MRSA §542(6).

M. Person. "Person" shall mean person as that term is defined by 38 MRSA §542(9).

N. Personal Property. "Personal property" shall mean tangible property of all types other than real estate and shall include any right, title or interest in or to such tangible property.

O. Real Estate. "Real estate" shall mean real property or any right, title or interest in or to real property and shall include easements of all types.

P. Respondent. "Respondent" shall mean the person determined in the first instance by the Board of Environmental Protection to have caused the discharge, and shall include the agents, servants or principal of such person. A respondent may also be a licensee.

Q. Rules. "Rules" shall mean these rules.

- 3. Construction.** These rules shall be liberally construed so as to secure speedy relief for those persons entitled to compensation on account of damages suffered because of the discharge of oil.
- 4. Delegation** Nothing in these rules shall be construed to prohibit the Board of Environmental Protection at its discretion, from delegating administrative, supervisory or investigatory authority to the commissioner nor the commissioner, at his discretion, from delegating such authority to members of his staff.
- 5. Claims.** Any person claiming to have suffered damages to real estate or personal property or loss of income directly or indirectly as the result of a discharge of oil, may submit a claim for such damages to the Board of Environmental Protection.
- 6. Time for Filing.** Except as provided in section 7 below, claims must be submitted to the Board of Environmental Protection within six (6) months after the occurrence of the discharge causing the damage.
- 7. Extension of Time for Filing Claims.** Upon written petition by a claimant, the Board of Environmental Protection may waive the six (6) months limitation for the filing of claims, upon good cause shown.

Petitions for a waiver shall be in such form and contain such information as the Board of Environmental Protection may prescribe from time to time.

"Good cause" shown shall include, but not be limited to, lack of knowledge on the part of the claimant of the occurrence of the damage, or of the extent of the damage until after the expiration of six (6) months from the occurrence of the discharge.

- 8. Form of Claims.** Claims shall be submitted in such form and contain such information as the Board of Environmental Protection may prescribe from time to time.

The claimant may submit information and materials including the reports of experts, photographs and other demonstrative evidence in addition to the information and materials required or suggested by the Board of Environmental Protection's claim form.

The Board of Environmental Protection may require additional information and material from a claimant at any time prior to payment of a claim to aid it and the Board of Arbitration in determining

the identity of the respondent, the cause of the discharge the validity of the damage claim or the amount of the damage. The Board of Environmental Protection and the Board of Arbitration may refuse to process a claim if the claimant refuses to supply the Board of Environmental Protection or the Board of Arbitration with such information or materials in the claimant's possession or subject to the claimant's control as the Board of Environmental Protection or the Board of Arbitration finds necessary to fully and fairly process the claim.

All damages shall be stated in their entirety in a single application. However, prior to any award of damages upon any claim, or the recovery of reimbursement to the fund from the respondent, whichever occurs first, such claim may be amended by the claimant as to the nature or extent of the damage, the cause of the damage or the amount of the claim.

- 9. Waiver of Claims Not Presented.** Damages not included in a claim at the time an award of damages is made shall be deemed waived; provided however, that claims for damages which could not have been discovered before an award has been made may, upon the Board of Environmental Protection's grant of a petition for an extension of time under section 7. above be the subject of an additional claim.

10. Administration: Board of Environmental Protection

- A.** The commissioner shall keep a separate file for each claim submitted, containing a copy of all of the materials and documents relating to it. However, in the case of multiple claims for damages caused by a common single discharge, the commissioner may keep a master file containing materials and documents common to all claims, without filing copies thereof in each separate claim file. If the commissioner elects to keep a master file, the fact of its existence shall be noted in each separate claim file.
- B.** The commissioner shall keep a "docket sheet" in each claim file which shall be kept current and shall indicate thereon each document received or action taken with regard to the claim, with the date and nature thereof. The "docket sheet" shall also show the amount of any award paid from the fund upon any claim and the date of such award.

11. Initial Processing of Claims

A. Cases Involving a Respondent

- (1) Notice to party alleged to have caused the discharge.
- (a) Upon receipt of a claim, the commissioner shall immediately notify the person alleged by the claimant to have caused the discharge, by mailing a Notice of Claim, a copy of the claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to such person.
- (b) If the commissioner has reason to believe that someone other than the person alleged by the claimant caused the discharge, the commissioner shall mail a Notice of Claim, a copy of the claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to such person.
- (c) When the person alleged by the claimant or believed by the commissioner to have caused the discharge is a carrier destined for or leaving a licensee's facilities at the time of the

discharge, or is otherwise the agent or servant of a licensee, the commissioner shall mail a Notice of Claim, a copy of the claim and, where practicable, a copy of any supporting documents or materials, by registered or certified mail, return receipt requested, to the licensee.

- (d) Notice pursuant to subparagraph a shall be in such form as the Board of Environmental Protection may prescribe from time to time and shall inform the person alleged to have caused the discharge and the licensee, if any, that they may file answers, including supporting documents, if any, with the Board of Environmental Protection:
 - (i) admitting the discharge, denying the discharge or taking no position with respect to the cause of the discharge; and
 - (ii) agreeing with the amount of the claim, disagreeing with the amount of the claim or taking no position regarding the amount of the claim within fifteen (15) business days of their having received notice of the claim.
- (2) Determination by the Board of Environmental Protection of respondent. At the next regularly scheduled meeting of the Board of Environmental Protection, following by at least seven (7) days receipt by it of answers pursuant to subsection 11(A) above, or if no answers are filed, then following by at least seven (7) days the expiration of the time for answering, the Board of Environmental Protection shall make a determination, based upon the information set forth in the claim, the answers, and other information which may be submitted to it by the commissioner, of the identity of the person who caused the discharge together with the identity of the licensee ultimately responsible, if other than the person determined by the Board of Environmental Protection to have caused the discharge. The Board of Environmental Protection shall immediately notify the claimant, the respondent and the licensee, if any, of its determination.
- (3) Claims agreed upon by the claimant and the respondent
 - (a) In cases where the claimant and the respondent, if any, agree to the amount of the claim and responsibility for the damage, the respondent shall pay the agreed amount to the claimant, and such payment shall not be deemed an admission of liability for purposes of any other claim or in any other proceeding.
 - (b) In cases where the claimant and the respondent, if any, agree to the amount of the claim but do not agree on the responsibility for the damage, and the Board of Environmental Protection also agrees to the amount of the claim, the commissioner shall certify the amount of the claim and the name and address of the claimant to the Treasurer of the State and the Treasurer shall pay the same from the fund.
 - (c) If the Board of Environmental Protection does not agree to the amount of the claim agreed to by the claimant and respondent in accordance with subparagraph b, the commissioner shall convene a Board of Arbitration pursuant to section 12 below.
- 4. Claims not agreed upon by the claimant and the respondent. If the claimant and the respondent do not agree to the claim, the commissioner shall upon notice from the claimant or the respondent convene a Board of Arbitration pursuant to section 12 below.

B. Mystery Spills. In cases where the claimant has not set forth the name of a person alleged to have caused the discharge and the Board of Environmental Protection or the commissioner cannot determine any person who may have caused the discharge, within thirty (30) days of the claim having been filed, the Board of Environmental Protection shall determine whether it agrees with the claim.

(1) Claims with which the Board of Environmental Protection agrees. If the Board of Environmental Protection agrees to the claim, the Commissioner shall certify the amount of Treasurer of the State and the Treasurer shall pay the same from the fund.

(2) Claims with which the Board of Environmental Protection does not agree. If the Board of Environmental Protection does not agree to the claim, the commissioner shall convene a Board of Arbitration pursuant to section 12 below.

C. Use of Consultants, Experts and Appraisers. In aiding the Board of Environmental Protection to exercise its powers under section 11. the commissioner may engage the services of experts, consultants, appraisers and others as he deems reasonably necessary.

12. Convening of Board of Arbitration. If the claimant and the respondent or the claimant and the Board of Environmental Protection do not agree upon the claim:

A. The Board of Environmental Protection shall designate a person to represent the public interest on the Board of Arbitration.

B. Where a Respondent has been determined pursuant to paragraph 11(A)(2), the Commissioner shall notify the respondent and the licensee, if different from the respondent. The notice shall request that a representative to the Board of Arbitration be designated by the respondent and shall state that upon failure to designate a representative within seven (7) days of receipt of such notice the Board of Environmental Protection will request the American Arbitration Association to utilize its procedures for the selection of such member. The notice shall also set forth the name, address and telephone number of the person chosen by the Board of Environmental Protection to represent the public interest on the Board of Arbitration. The notice shall further state that the first meeting of the Board of Arbitration must be held not more than ten (10) days from the date upon which a chairman is selected pursuant to these rules.

C. If a person is not designated to represent the respondent on the Board of Arbitration within seven (7) days of receipt of the notice specified in subsection B, the commissioner shall request the American Arbitration Association to select such member.

D. In cases where a Respondent has not been determined and the claimant and the Board of Environmental Protection cannot agree on the claim, the commissioner shall request the American Arbitration Association to use its procedures for the selection of a member to represent the unknown person who caused the discharge.

13. Submission of Claims to the Board of Arbitration. Prior to the first meeting of the Arbitrators, or any two of them, the commissioner shall forward the claim together with all attachments and supporting documents, copies of all notices sent and answers and responses received, investigation reports and all other materials, documents, reports and demonstrative evidence relating to the discharge and the claim for damages, within his possession or subject to his control, to the member of

the Board of Arbitration representing the public interest, for inclusion in the file of the Board of Arbitration.

14. Selection of a Chairman. Within ten (10) days of the designation of the person to represent the respondent or the unknown discharger on the Board of Arbitration, the member of the Board of Arbitration representing the public interest, shall meet with the member representing the respondent or unknown discharger and the two shall choose a neutral arbitrator who shall be chairman. If the two members fail to name the neutral arbitrator within five (5) days after their meeting, then the commissioner shall request the American Arbitration Association to use its procedures for the selection of the neutral arbitrator.

15. Multiple Claims from One Discharge. One Board of Arbitration shall be established for and hear and determine all claims requiring a Board of Arbitration determination arising from or related to a common single discharge.

Upon receipt of a claim based upon a discharge for which a prior claim has been submitted the Board of Environmental Protection and the Board of Arbitration shall process the new claim in accordance with the procedures set forth in this chapter and the time limits applicable to the latest claim filed shall govern such combined processing activities as are required in processing the claims.

16. Membership and Compensation

A. Any person may serve as an arbitrator provided that person is not any of the following:

- (1) A member of the Board of Environmental Protection.
- (2) An employee of the department.
- (3) A respondent or claimant.
- (4) An employee, agent, insurer, or legal counsel to a respondent or a claimant in the arbitration proceedings.

B. Any person except those prohibited in subsection A may serve on more than one Board of Arbitration, either simultaneously or consecutively.

C. Each member of a Board of Arbitration shall be paid from the fund for his services rendered at a rate of \$30.00 per hour or part thereof spent in connection with his services, provided, however, that payments do not exceed \$300.00 per day. Compensable services shall include travel time to and from board meetings and hearings. In addition, each member shall be reimbursed for all reasonable and necessary expenses incurred in connection with the official business of the board including, but not limited to, meals, lodging, and transportation. If a member uses his personal motor vehicle for board matters, he shall be paid a mileage allowance at the rate specified for State of Maine employees.

17. Powers and Duties of Board of Arbitration

A. After approval of the commissioner, the Board of Arbitration or its chairman, may obtain the services of clerical personnel, reporters, stenographers, consultants, experts, appraisers, attorneys and others on a contractual basis or otherwise, and may rent, lease or otherwise procure such

meeting rooms, hearing rooms, services, supplies, equipment and other materials reasonably necessary for the processing and determination of claims provided that the concurrence of the Attorney General shall be required prior to obtaining the services of any attorney or other person intended to perform legal services. The sums necessary to exercise the powers granted hereunder shall be paid from the fund upon a draft signed by the chairman and countersigned by the commissioner.

- B.** The Board of Arbitration may make use of the staff of the department for such purposes it deems necessary for the processing and determination of claims. Arrangements for the use of any member of the staff of the department shall be made through the commissioner and shall not interfere with the effective administration of the department. The Board of Arbitration shall reimburse the department for the salary and expenses of any staff member so used. The Board of Arbitration may also subpoena any member of the staff of the department as a witness, pursuant to subsection 17(C).
- C.** The Board of Arbitration shall have the power to administer oaths and to issue subpoenas for attendance and testimony of witnesses, the production of books, records and other evidence pertinent to the issues presented to it-for determination. Witnesses subpoenaed to appear before the Board of Arbitration, shall receive fees and mileage equal to the fees and mileage to which witnesses in the Superior Court are entitled.
- D.** If at any time during the administrative life of a Board of Arbitration, a member of such Board of Arbitration should for any reason become unwilling or unable to continue as a member of such Board of Arbitration, a new member shall be appointed as a substitute for such member, in accordance with the manner in which such member was originally chosen.

18. Administration Board of Arbitration

- A.** The chairman shall keep a separate file for each claim submitted, containing a copy of all of the materials and documents relating to such claim. However, in the case of multiple claims for damages caused by a single discharge, the chairman may keep a master file containing materials and documents common to all claims, without filing copies thereof in each separate claim file. If the chairman elects to keep a master file, the fact of its existence shall be noted in each separate claim file.
- B.** The chairman shall keep a "docket sheet" for each claim file which shall indicate thereon the nature of each document received or action taken with regard to such claim, and the date thereof. The "docket sheet" shall also show the amount and date of any award from the fund for the claim.
- C.** The Board of Arbitration shall provide immediate written notice of a determination on any claim to the claimant and the respondent.
- D.** Upon the expiration of fifteen (15) days after final determination of an award the chairman shall submit a notice of award, signed by at least two (2) members of the Board of Arbitration to the Treasurer of the State of Maine for payment to the claimant, from the fund; provided that such notice of award shall not be submitted during the pendency of any request for review of a final determination by the court of highest jurisdiction; but such notice of award shall be submitted to the Treasurer for payment immediately upon termination of the review by the court if the review results in a determination affirming the award.

19. Consideration of Disputed Claims. In cases where the claimant and the respondent or the claimant and the Board of Environmental Protection do not agree upon the claim and in cases where the respondent has failed or refused to participate in the proceedings, the Board of Arbitration shall within ten (10) days after the chairman has been appointed:

- A. make a determination of the claim; or
- B. schedule a hearing on the claim; or
- C. require the claimant, the respondent and any appraisers, consultants or experts hired by the Board of Arbitration to submit such additional information, materials and evidence as the Board of Arbitration deems necessary to make a full and fair determination, within such time as may be specified by the Board of Arbitration having due regard to the policy of the Coastal Conveyance Act for the speedy resolution of claims, and thereafter, within ten (10) days of receipt of the materials requested, make a determination of the claim, or schedule a hearing on the claim.

19-A. Right to a Hearing. Where a hearing has not been held, the Board of Arbitration shall schedule a hearing upon any claim for which an award has been made or denied, when requested to do so by the claimant or the respondent or the commissioner in cases where no respondent has been identified within fifteen (15) days of notice of a decision. Such hearing shall be scheduled and conducted within twenty (20) days of receipt of the request for a hearing.

20. Consolidation of Claims for Hearing. The Board of Arbitration may at its discretion, consolidate two or more claims for damage from a common discharge for the purpose of a single hearing in order to save time and expense in processing claims.

21. Rules for the Conduct of Hearings

- A. **Scope of Rules.** These rules govern the practice, procedure and conduct in all hearings held by the Board of Arbitration.

In special cases, where good cause appears, the Board of Arbitration may suspend or otherwise permit deviation from these rules insofar as it may find compliance therewith to be impractical or unnecessary.

- B. **Notice and Location**

- (1) Notice. Notice of a hearing shall be sent by certified mail, return receipt requested, to the claimant and the respondent at least ten (10) days prior to the hearing.

- (2) Location. Hearings shall be held at such time and place as the Board of Arbitration shall fix.

- C. **Presiding Officer.** The presiding officer at any hearing shall be either (1) the chairman, if willing to preside, otherwise (2) a member of the Board of Arbitration selected by the other members. The presiding officer shall have the authority to:

- (i) administer oaths or affirmations;
 - (ii) rule upon issues of evidence;

- (iii) regulate the course of the hearing;
- (iv) rule upon issues of procedure; and
- (v) take such other actions as may be ordered by the Board of Arbitration or as are necessary for the efficient and orderly conduct of the hearing, consistent with these rules and applicable statutes.

D. Prehearing and Mid-hearing Conferences

- (1) General. The Board of Arbitration, the chairman or the presiding officer, may hold a prehearing conference to consider the formulation or simplification of issues, the possibility of obtaining admissions of act and of documents, arrangements for the exchange of proposed exhibits or prepared expert testimony, limitation of the number of witnesses, establishment of procedure for the hearing, and such other matters as may expedite orderly conduct and disposition of the proceedings.
- (2) Action taken. The actions taken at such conferences and the agreements made by the parties shall be made a part of the record.
- (3) Recessing hearing for conference. During any hearing, the presiding officer may, in his discretion call the claimant and the respondent for a conference to effectuate the purposes of this rule. The presiding officer shall state on the record the results of such conference.

E. General Conduct

- (1) Opening statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
- (2) Transcription of testimony. All testimony at hearings before the Board shall be recorded and, as necessary, transcribed.
- (3) Testimony under oath. All witnesses shall be sworn.
- (4) Subpoenas. On its own motion the Board of Arbitration may, and upon the motion of the claimant or the respondent, the Board of Arbitration shall, subpoena witnesses to attend, testify and produce records. A subpoena may be served by the sheriff, by his deputy, by a constable, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fee for one (1) day's attendance and the mileage allowed by subsection 17(C).
- (5) Testimony in written form. At any time, prior to or during the course of the hearing, the chairman or the presiding officer may require that all or part of the testimony to be offered at the hearing be submitted in written form at such time as he may specify. All persons offering testimony in written form pursuant to this rule shall be subject to cross-examination as provided in paragraph 21(G)(3). All testimony offered in written form shall be available for inspection as provided in paragraph 21(F)(4), and the party submitting the written testimony may be required to serve a copy thereof on the claimant and the respondent by a specified time, in order that all persons participating in such hearings may have a reasonable

opportunity to examine such testimony and prepare such questions or cross-examination as they deem necessary.

- (6) Continuance. All hearings conducted pursuant to these rules may be continued for reasonable cause and reconvened from time to time and from place to place by the chairman or the presiding officer as circumstances require. All orders for continuance shall specify the time and place at which such hearing shall be reconvened.
- (7) Regulation of Certain Devices. The placement and use of television cameras, still cameras, motion picture cameras or microphones at the Board of Arbitration hearings, other than by the official Board of Arbitration reporter for the purposes of recording the proceedings thereof, may be regulated by the Chairman or the presiding officer.

F. Evidence

- (1) General. Evidence which is relevant and material to the subject matter of the hearing and is of a type commonly relied upon by reasonable men in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded.
- (2) Official Notice. The Board of Arbitration may, at any time, take notice of judicially cognizable facts and generally recognized facts of common knowledge to the general public. The Board of Arbitration shall include in its final decision those facts of which it took official notice, unless those facts are included in the transcript of the record.
- (3) Proof of official record. The chairman or the presiding officer may require that an official record or lack thereof be evidenced by an official publication or by a copy or a statement attested by a person having, or who would ordinarily have, the legal custody of the record.
- (4) Documentary and real evidence. All documents, materials and objects offered in evidence as exhibits shall, if accepted, be numbered or otherwise identified. Documentary evidence may be received in the form of a copy or excerpts, if the original is not readily available. The chairman or the presiding officer may require, after prior oral or written reasonable notice, that any party offering any documentary or photographic evidence provide the Board of Arbitration with an appropriate number of copies of such documents or photographs, unless such documents or photographs are determined to be of such form, size or character as not to be reasonably susceptible of reproduction. The claimant and the respondent shall provide each other with copies of any exhibit offered in evidence unless otherwise ordered by the presiding officer. All documents, materials and objects admitted into evidence shall be made available for examination during the course of the hearing. All such evidence will also be available for public examination at such other reasonable times and places as the chairman may determine.
- (5) Objections. All objections to rulings of the presiding officer regarding evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. If during or after the close of the hearing and during its deliberations the Board of Arbitration determines that a ruling of the presiding officer was in error, it may reopen the hearing or take such other action as it deem appropriate to correct such error.

G. Testimony and Cross-Examination

- (1) Varying order of appearance. When circumstances warrant, the Chairman or the Presiding Officer may vary the order in which witnesses appear and the order in which testimony is given or witnesses cross-examined.
- (2) Direct testimony. Direct testimony shall be offered in the following order:
 - (a) The claimant and such representatives and witnesses as he chooses.
 - (b) The respondent and such representatives and witnesses as he chooses.
 - (c) Board of Arbitration experts and consultants and witnesses called by the Board of Arbitration on its own motion.
- (3) Cross-examination and questions. At the conclusion of the testimony of each witness, the Board of Arbitration members, experts and consultants, the claimant and the respondent shall have the right to oral cross-examination. Cross-examination shall be conducted in the following order:
 - (a) The claimant;
 - (b) The respondent; and
 - (c) Board of Arbitration experts and consultants.

In addition, Board of Arbitration members and counsel for the Board of Arbitration may ask questions of any witness at any time. The presiding officer may require that all cross-examination, either oral or written, be conducted at the conclusion of the testimony of each category of witness rather than at the conclusion of the testimony of each individual witness.

- (4) Rebuttal testimony. At the conclusion of all direct testimony and the cross-examination of each witness or category of witness as determined by the presiding officer pursuant to paragraph 21(G)(1), all persons participating in such hearing shall have the opportunity to submit rebuttal testimony in the order provided in section 21(G)(2). Rebuttal testimony will be limited to those matters which were the subject of direct testimony and cross-examination and no new subject matter may be introduced into such a hearing by way of rebuttal.
- H. Conclusion of Hearing.** After the conclusion of the hearing, no other evidence or testimony will be allowed into the record.
- I. Reopening the Record.** At any time prior to a final decision, the Board of Arbitration may reopen the record for further proceedings consistent with these rules provided, however, that the Board of Arbitration shall give notice of such further proceedings, in writing, to the claimant and the respondent at least five (5) days prior to such proceedings.
- J. Briefs, Proposed Findings.** All persons participating in any hearing shall have the right to submit to the Board of Arbitration, written proposed findings of facts, briefs and recommended determinations within such time as may be ordered by the presiding officer or the chairman.

- K. Oral Argument.** Oral argument shall be permitted before the Board of Arbitration at the conclusion of the evidence or at a time and place to be fixed by the chairman, or presiding officer at his discretion.
- L. Record.** The record of the hearing shall consist of the recording or transcript of the hearing and all exhibits.

22. Decision

- A. Time.** Within thirty (30) days of the close of the record of the hearing, if any, or within the time limits otherwise applicable pursuant to section 19 when no hearing was held, the Board of Arbitration shall issue its decision, in writing, to the claimant and the respondent. Except that in a proceeding involving more than one claimant, the Board of Arbitration may designate an additional time within which to issue its decision, but in no case shall such decision be delayed beyond sixty (60) days after the close of the record.

B. Content

- (1) A decision issued hereunder shall set forth the name of the claimant, the name of the respondent, the date of the discharge, the nature of the discharge, the amount of the claim and the amount of the award, if any. In addition, the decision shall set forth the facts upon which the decision was based and shall also set forth any facts officially noticed by the Board of Arbitration and upon which its decision was based.
- (2) The notice of decision shall also state that the claimant and the respondent may petition for the correction of error or reconsideration of officially noticed facts all as provided in paragraph 21(F)(2).
- (3) If no hearing has been held, the notice of decision shall also inform the claimant and the respondent that a hearing will be held if either of them so requests in writing. If no such request is received within fifteen (15) days of the issuance of the decision, the decision shall become final.

- C. Notice to the Board of Environmental Protection.** Upon a decision becoming final and upon certification of the award to the Treasurer of the State, the chairman shall forward the complete record of the claim, including the tape or transcript of any hearing, all exhibits, attachments, reports, correspondence and all other materials, together with the docket sheet required by subsection 18(B) to the Board of Environmental Protection.

- 23. Petition for Correction of Error or Reconsideration of Officially Noticed Facts.** Within ten (10) days after the receipt of notice of any decision, the claimant or the respondent may petition the Board of Arbitration to correct any misstatement of fact or other clerical error contained in the final decision or to challenge any material fact of which the Board of Arbitration took official notice. The Board of Arbitration shall determine whether to (1) dismiss the petition as without merit, (2) correct the error, (3) schedule or reopen a hearing to correct such error or to hear evidence relating to the noticed material, or (4) take such other steps as it deems appropriate.

24. Amount of Awards

- A. Default Judgments or Awards.** In cases of mystery spills or where a respondent has failed to file an answer or response or to participate in the proceedings, the amount of damages awarded by the Board of Environmental Protection or the Board of Arbitration shall not exceed the amount of the claim as initially filed or as amended from time to time prior to a final decision, so long as any amendment is timely served upon the respondent where one has been identified.
- B. Judgment or Award of Contested Claim.** Except as provided in subsection A above, every award shall grant the relief to which the claimant is entitled even if that amount exceeds the amount of the claim.

25. Public Records

- A. Files and Records.** Unless specifically otherwise ordered by the Board of Environmental Protection or the Board of Arbitration pursuant to subsection B below, the files and records of the Board of Arbitration as to claims submitted under the Coastal Conveyance Act shall be open to inspection by any interested person at such reasonable times and places as may be set by the commissioner.
- B. Protective Orders.** Upon motion by a claimant or a respondent, and upon good cause shown, the Board of Environmental Protection or the Board of Arbitration may order that any or all documents, records and other materials submitted by the person making the motion be sealed and open only to the members and staff of the Board of Environmental Protection, the Board of Arbitration, the claimant and the respondent or upon order of court. Orders issued hereunder shall be used only for the purpose of protecting trade secrets, secret processes, formulas or other methods used by the moving party or under his direction and for the purpose of protecting business records and reports including but not limited to financial reports, records, and projections which could reasonably be seen to have a harmful economic, business or financial effect on such person if such materials were disclosed, except that where the claimant and the respondent agree and the Board of Environmental Protection or the Board of Arbitration, as appropriate, approves, an order may issue hereunder covering any document, record or other materials which may be harmful to one of the parties.
- C. Hearings.** All hearings shall be open and any interested person may attend.

26. Miscellaneous

- A. Extensions of Time.** The chairman or the commissioner, as appropriate, shall have the right, upon the motion of the Board of Arbitration, a claimant or a respondent, to extend any time limits imposed for such further time as is reasonable and required by the interests of justice.
- B. Forms.** All motions, proposed findings, petitions and briefs, and to the extent practicable, written testimony filed with the Board of Environmental Protection or the Board of Arbitration, except for documents not susceptible of reproduction in the manner herein provided or for other good cause shown, shall be typewritten or printed on white opaque paper 8½ x 11 inches in size, bound on the left margin. Typed matter shall be double spaced. The first page of each such document shall be headed by the title:

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION
BOARD OF ARBITRATION (IF BEFORE THE BOARD OF ARBITRATION)

(COASTAL CONVEYANCE ACT)

and shall have (1) a caption as follows: In the matter of Claim of _____ for damages from oil discharge, (2) the title of the document, (3) the name of the person or organization submitting the document, and (4) the date upon which the document was submitted.

C. Service and Filing of Documents

- (1) Service. A copy of all amendments to claims, motions, petitions, briefs and pre-filed written testimony, permitted or required to be filed with the Board of Arbitration pursuant to these rules shall be served upon claimants and respondents in the proceeding or their representatives as follows:

Whenever under these rules service is required or permitted to be made upon a party represented by another person the service shall be made upon the representative unless service upon the party himself is ordered by the Board of Arbitration. Service upon a representative who has ceased to represent a party is sufficient compliance with this rule until written notice of change of representative has been served upon the other parties. Service upon the representative or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the chairman. Delivery of a copy within this rule means: handing it to the representative or to the party; or leaving it at the appropriate office with a designated clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

- (2) Representatives. The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

D. Computation of Time. All computations of time under this rule shall be in the same manner as provided by Maine Rules of Civil Procedure, Rules 6(a), (b) and (c).

E. Receipt of Claims Regarding Discharge for Which Prior Claim Has Been Filed. Upon receipt of a claim based upon a discharge for which a prior claim has been referred to the Board of Arbitration, the Board of Arbitration shall process the new claim in accordance with this rule.

F. Supplemental Regulations. Upon written agreement of both the claimant and the respondent, the Board of Environmental Protection or the Board of Arbitration may waive, alter, modify, supplement or suspend any part of this rule for the purpose of simplifying procedures and speeding the final resolution of claims.

AUTHORITY: 38 MRSA, Sections 361, 546, & 551

EFFECTIVE DATE: September 30, 1974

Amended: Section 16 - June 20, 1983

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 4, 1996

BASIS STATEMENT

The establishment of a third party damage claim is a complex endeavor. The rights of the various parties and the State need to be protected. In addition, a speedy resolution of the claim is vital. This rule provide the foundation for processing claims as well as validating claims.